HIGH COURT OF CHHATTISGARH AT BILASPUR

Misc. Appeal No. 756 of 2005

CORAM: Hon'ble Shri S.R. Nayak, CJ
& Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Appellant
Insurer

United India Insurance Company Limited through Branch Office, Opposite Gopi Talkies, Raigarh (C.G.)

Versus

Respondents:
Claimants

1. Smt. Hilda Khalkho, widow of late Kelman Xalxo alias Claimant Xalxo, aged 30 years, occupation-House wife.
2. Ku. Saroj Khalkho, d/o late Kelman Xalxo alias Claimant Xalxo, aged 12 years. (Minor)
3. Ku. Alpana Khalkho, d/o late Kelman Xalxo alias Claimant Xalxo, aged 10 years. (Minor).
4. Sachin Khalkho, s/o Late Kelman Xalxo alias Claimant Xalxo, aged 4 years. (Minor)

   (Respondents no.2 to 4 minor through their natural guardian mother Smt. Hilda Xalxo widow of Kelman Xalxo).
5. Nicholas Khalkho, s/o Maithra Xalxo, aged 65 years.

   (All r/o Chelitangtoli, police station and district Jashpur Nagar (C.G.)

DRIVER

6. Nazarious Kerketta
   s/o Subsityus Kerketta, aged 33 years, occupation-Driver, r/o Tekul, police station & district Jashpur Nagar (C.G.)

DRIVER

7. Baldeo Uraon s/o Chhedi Uraon, aged 55 years, occupation-Driver, presently r/o Karbala Road, Jashpur Nagar, r/o Village-Karonda (Litotoli) Khora, District Gumla (Jharkhand)

OWNER

8. Branch Manager, Adivasi Vitta Vikas Nigam, Raigarh (CG).

Shri Abhishek Sinha, Counsel for the appellant.

ORAL ORDER
(Passed on 2nd January 2006)

The following oral order of the Court was passed by S.R.NAYAK, C.J.

1. In this appeal preferred by the Insurance Company, the correctness of the impugned award is assailed only on the ground that the deceased was travelling in the motor vehicle involved in the accident, as a passenger, in breach of the conditions of the insurance policy, and therefore, that is a valid ground for the appellant-Insurance Company to deny the liability to pay compensation in terms of the clause (a) (i) (a) of sub-section (2) of Section 149 of the Motor Vehicles Act, 1988 (for short 'the Act'). Both in terms of pleading as well as proof, the above plea raised by the learned counsel for the Insurance Company cannot be sustained. In the first place, the plea taken in that regard as reflected in the written statement filed before the Motor Accidents Claims Tribunal (M.A.C.T.) is as vague as it could be. Secondly, there is absolutely no material evidence adduced by the Insurance Company to establish the fact that the deceased was travelling in the motor vehicle involved in the accident as a passenger for hire or reward. In other words, the essential condition to attract the provisions of clause (a) (i) (a) of sub-section (2) of Section 149 of the Act, 1988 is established. No other point was urged before us to contest the correctness of impugned award.

2. The appeal is, therefore, dismissed, however, with no costs.

Sd/-
Chief Justice
Judge

Sd/-
Dilip Raosaheb Deshmukh
Judge

Anjani
Priya